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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,445	07/02/2003	Katarina Magnusson	SG 03197	5438
44912	7590	08/20/2010		
WRB-IP LLP 801 N. Pitt Street, Suite 123 ALEXANDRIA, VA 22314			EXAMINER MCGOWINS, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1782	
			NOTIFICATION DATE	DELIVERY MODE
			08/20/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/612,445

Applicant(s)

MAGNUSSON, KATARINA

Examiner

Michael C. Giggins

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/4/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION
REJECTIONS WITHDRAWN

1. There are no rejections withdrawn

REJECTIONS REPEATED

2. All of the rejections either maintained or set forth in the non-final rejection of 4/1/10, page 2, paragraph 2.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Furuya et al. (US 4355756).

Furuya discloses a method for packaging and retort sterilizing a food product (column 2, lines 1-34) comprising the steps of providing an open container comprising a laminate including a base layer formed from paper or cardboard, outer and inner layers comprising a first and second polymeric material respectively (column 2, lines 1-34), adding a food product to the inside of the container under non-aseptic conditions (column 4, lines 57-63), closing the container and exposing the outside of the container

to retort sterilization at a temperature between 90 and 121 degrees C (column 5, line 57 through column 6, line 2), maintaining said retort sterilization for a time sufficient to heat said container and said food product to a temperature providing sterilization of said food product while maintaining dimensional stability (column 5, line 57 through column 6, line 2), allowing the container and food product to cool (column 5, line 57 through column 6, line 2) since the container must be allowed to cool to examine and evaluate the container), wherein said outer and inner polymeric materials are made from high density polyethylene, polypropylene or polyethylene terephthalate (column 2, lines 58-68).

Furuya also discloses wherein the laminate contains an aluminum barrier layer (column 2, lines 11-34) and wherein said laminate additionally includes a coating adjacent on one or both sides of the barrier layer wherein the coating is an adhesive plastic (column 3, lines 38-54, since LDPE is taught). Furuya discloses a method for packaging and retort sterilizing a food product (column 2, lines 1-34) comprising the steps of maintaining said retort sterilization for a time sufficient to heat said container and said food product to a temperature providing sterilization of said food product while maintaining dimensional stability (column 5, line 57 through column 6, line 2), wherein said article has an F value of between 3 and 18 (column 6, lines 1-2) and wherein the laminate contains an aluminum barrier layer (column 2, lines 11-34) and wherein said laminate additionally includes a coating adjacent on one or both sides of the barrier layer wherein the coating is an adhesive plastic (column 3, lines 38-54, since LDPE is taught).

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments of 8/2/10 have been carefully considered but are deemed unpersuasive.

For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., PPG, 156 F.3d at 1355, 48USPQ2d at 1355 ("PPG could have defined the scope of the phrase consisting essentially of for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention."). See also *In re Janakirama-Rao*, 317 F.2d 951, 954, 137 USPQ 893, 895-96 (CCPA 1963). When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964) (applies to instant claim 16).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/
Primary Examiner, Art Unit 1782

MCM
August 16, 2010